
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

R. S.A. No. 5 of 2003

Date of decision: 20.11.2007

Rai Chand

...Appellant

Versus

Devinder Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. L.N.Verma, Advocate with
Mr. Ashok Verma, Advocate for the appellant.

Mr. A.K.Chopra, Senior Advocate with
Mr. Harminderjit Singh, Advocate for the respondents.

RAJESH BINDAL, J.

The plaintiff is in second appeal before this Court against the concurrent findings of fact by both the Courts below whereby suit filed by him for permanent injunction and possession was dismissed.

The claim made by the appellant/plaintiff is that he alongwith his three brothers was a partner in a firm M/s Raj Kumar Ravinder Kumar (for short "the firm"), which was carrying on business at Bhatinda. In the year 1970, property measuring 2000 sq. yards was purchased by the firm in co-ownership of three of the brothers, namely, the appellant Rai Chand, Mal Chand, Dal Chand and 4th brother Sumer Chand did not join with the deal. As the accounts of the firm were being looked after by Mal Chand, he got the sale deed registered in the name of his wife Sohni Devi without knowledge of the appellant. When the claim made by the appellant was not accepted regarding his share in the property, the suit was required to be filed. The claim made by the appellant did not find favour with both the Courts below.

The learned counsel for the appellant referred to the accounts of the firm which were assessed to Income Tax (at pages 4 and 16 of the record Ex. P-1 and Mark B-2). A perusal thereof shows that twice the

amount (Rs. 20,000/- on February 20, 1970 and Rs. 50,777.50 paise on April 20, 1970) was withdrawn from the capital account of Mal Chand for the purpose of registration of sale deed of the property in dispute. These accounts are pertaining to the years 1969-70 and 1970-71 respectively. These documents have been produced by the appellant/plaintiff only. A perusal thereof shows that entire amount for the purchase of property was paid by one brother Mal Chand and none of the three brothers, who though were partners in the firm, made any contribution for that.

Even otherwise the claim set up by the appellant to the effect that the property was purchased by the firm cannot be accepted for the reason that if the firm was to pay or had paid the consideration for purchase of the property, either the property would have been shown as the asset of the firm or equally shared by all the partners in case amount of consideration had been debited equally in the capital account of the partners. There is no document produced to show otherwise than what is reflected in the accounts book which clearly depicts that the property was purchased by Mal Chand individually out of his own sources. The documentary evidence is sought to be contradicted merely by oral statement of the plaintiff, which cannot be permitted. If the property was purchased by the firm, the reason why fourth brother was left out is not forthcoming.

When the brothers were carrying on the business jointly, they had access to the accounts. Ignorance about the sale deed or as to how the amount was shown and entered into in the books of accounts cannot be pleaded or accepted.

Suit in the present case was filed only on September 7, 1989 and the reason which could be inferred for the filing thereof is a compromise effected by Sohni Devi wife of Mal Chand with Dal Chand in a suit filed by her against him where a sum of Rs. 40,000/- was paid by her to him. The compromise was effected in that suit on September 5, 1989 and immediately on September 7, 1989 appellant/plaintiff filed the present suit considering that he may also be able to get some amount from his brother.

Further even the delay in filing the suit also could not be explained satisfactorily. In para 5 of the plaint, it is admitted by the

appellant/plaintiff that the firm was dissolved on March 31, 1972 and thereafter, brothers separated and the plaintiff shifted to Sirsa. Meaning thereby the accounts must have been settled between the brothers at the relevant time. Accordingly no ignorance about the entries could be claimed. It is further alleged in para 10 of the plaint that the cause of action arose to the appellant/plaintiff about 10 years before filing of the suit on September 7, 1989 when the dispute regarding the ownership of the house in question was allegedly settled with the intervention of the relatives and other persons. Once these facts are admitted in the plaint itself, the suit filed by the appellant/plaintiff was clearly belated and he has rightly been non suited on this ground as well.

For the reasons stated above, I do not find any illegality has been committed by the Courts below in dismissing the suit of the appellant/plaintiff. The findings are plain and simple findings of fact. No substantial question of law arises.

The appeal is accordingly, dismissed.

November 20, 2007
Pka

(Rajesh Bindal)
Judge
